

been taken note by the Railway Board in the aforesaid circular, which has got approval from the Hon'ble Supreme Court as well.

(10) In view of the above, we are of the opinion that the learned Tribunal was not justified in declining the relief to the petitioner only on the basis of his ranking in the selection list, when the circular issued by the Railway Board squarely covers the claim of the petitioner.

(11) Consequently, the present writ petition is allowed. The impugned order passed by the Tribunal is set aside. The respondents are directed to grant all consequential benefits to the petitioner in respect of seniority and pay fixation from the date all other candidates in pursuance of the same written test in which the petitioner qualified,—*vide* Annexure P.2, were promoted. The necessary relief be granted within a period of three months from the date of the receipt of the certified copy of the order.

R.N.R.

Before Hemant Gupta and Mohinder Pal, JJ.

SHASHI KANT,—Petitioner

versus

STATE OF HARYANA AND OTHERS,—Respondents

C.W.P. No. 11218 of 2005

31st January, 2008

Constitution of India, 1950—Art. 226—Haryana Affiliated Colleges (Security of Service) Rules, 1993—Rls. 6 and 7—Appointment of respondent No. 5 to post of Lecturer in Business Administration—Respondent lacking mandatory condition of qualifying NET—Petitioner fulfilling qualifications as prescribed by University—Whether writ petition against unaided or unsanctioned post is maintainable—Held, yes—Though post may be unsanctioned, unaided but still institute is affiliated to the University—Respondents bound to maintain standards of education as per rules of affiliation framed by University—Action of Institute

in matter of appointment of teaching faculty cannot be said to beyond the jurisdiction of High Court—Petition allowed, recommendation of Selection Committee set aside.

Held, that even though the post may be unsanctioned, unaided but still the respondent institute is affiliated to the University. The respondents are bound to maintain standards of education as per the rules of affiliation framed by the University. Since the respondent institute is to maintain minimum standard of education in terms of Affiliation Rules framed by the University, therefore, the action of the Institute in the matter of appointment of teaching faculty cannot be said to beyond the jurisdiction of the Court.

(Para 10)

Ramesh Hooda, Advocate *for the petitioner.*

O. P. Sharma, Additional Advocate General, Haryana.

Dr. Balram Gupta, Senior Advocate with Pankaj Sharma, Advocate
for respondent No. 2.

Deepak Sibal, Advocate for respondents No. 3 and 4.

HEMANT GUPTA, J.

(1) The challenge in the present writ petition is to the selection and appointment of respondent No. 5 on the post of Lecturer in the subject of Business Administration for BBA Course in respondent No. 4 Institute.

(2) It is the case of the petitioner that Sonepat Hindu Educational and Charitable Society, Sonepat, is a registered Society running various educational institutions which are affiliated to the Maharishi Dayanand University, Rohtak (hereinafter to be referred as “the University”). All the institutions are getting 95% aid from the Government and are affiliated to the University. The service conditions of the employees of the institute are regulated by the statutory rules and, therefore, amenable to the writ jurisdiction of this Court. It is also pointed out that service conditions of the employees of respondent institute are regulated by the Haryana Affiliated Colleges (Security of Service)

Rules, 1993 (hereinafter to be referred as "the Rules"). As per Rule 6 of the aforesaid Rules, the qualifications to the post in service are as specified by the University. As per Rule 7, recruitment to the service is made by a Selection Committee comprising the Chairman of the Managing Committee or the Vice-Chairman in his absence ; the nominee of the Vice-Chancellor and a representative of the Director of Higher Education, Haryana.

(3) It is pointed out that the petitioner has passed the Degree of Master of Business Administration securing about 63% marks in the year 2003 and has also passed the National Educational Test (hereinafter to be referred as "the NET") conducted by the University Grants Commission (hereinafter to be referred as "the UGC") in December, 2003. It is, thus, contended that the petitioner fulfils the qualifications for the post of Lecturer prescribed by the University.

(4) An advertisement was issued in respect of the post of Lecturer in Business Administration for Bachelor of Business Administration Course in the Institute. The petitioner was eligible in terms of the qualifications laid down in University Grants Commission (Qualifications required of a person to be appointed to the teaching staff of the University and the institutions affiliated to it) Regulations, 1991. The condition of qualifying NET is mandatory but still respondent No. 5 who does not possess the qualification of NET has been selected and given appointment against the post of Lecturer. It is contended that respondent No. 5 is not eligible for the post of Lecturer as she lacks the mandatory condition of qualifying NET.

(5) The University in its reply stated that the appointment of a teacher in a private college can be made by way of appointment of a Selection Committee and is effective only on the acceptance/approval by the affiliating University. It was pointed out that the Vice-Chancellor of the University has not nominated subject expert nor the appointment of respondent No. 5 was even approved.

(6) In reply on behalf of respondents No. 3 and 4, it has been submitted that the petitioner was not found suitable and, therefore, he was not offered any appointment. It has been pointed out that respondent

No. 5 was allowed to continue to teach classes of BBA till regular appointment is made as a Guest Lecturer. It is also pointed out that BBA course is being conducted under Self Financing Scheme and no grant for the same is given by the Government or UGC to run this course. Thus, qua this course, writ petition filed by the petitioner is not maintainable.

(7) This Court on 16th November, 2006 directed the Director General of Higher Education, Haryana, to hold an enquiry into the manner of advertisement and selection and that the post which was sought to be filled up, *prima facie*, appear to be an aided post. In terms of the said direction, report of the Director General of Higher Education dated 3rd January, 2007 has been placed on record. It has been found that the post which was sought to be filled up in an un-aided and un-sanctioned post and that the candidature of the petitioner was not found suitable by the Selection Committee though he was NET qualified. It has been further found that Hindu College, Sonapat referred the case of respondent No. 5 for relaxation in the minimum qualifications to the UGC for appointment to the post of Lecturer in Business Administration and that nominee of Education Department or Vice-Chancellor of the University were not required to be part of the Selection Committee. It is also pointed out that basic minimum qualification for appointment faculty to teach courses being run under Self Financing Scheme is NET.

(8) Along with the report, learned Director General of Higher Education has attached the record of attendance sheet who appeared in the interview, Annexure P-3. The said Annexure contains marks of the candidates in Matric, XII, Degree and M.B.A. It has also the column whether the candidate is NET qualified. The minutes of the Selection Committee have been appended as Annexure P-4 wherein the name of respondent No. 5 has been recommended by the Selection Committee with a note that her case be sent to the UGC through MDU University for approval "due to non-availability of NET qualified persons".

(9) Learned counsel for respondents No. 3 and 4 vehemently argued that writ petition against unaided or un-sanctioned post is not maintainable. It is also argued that, in any case, the petitioner has the effective alternative remedy to approach the Tribunal i.e., learned District Judge of the district concerned who has the powers to hear the appeals of the employees of aided/unaided technical institutions against

decisions of management in terms of the Supreme Court judgment in **TMA PAI Foundation and others versus State of Karnataka and others, (1)**.

(10) Having heard learned counsel for the parties at some length, we are of the opinion that even though the post may be unsanctioned, unaided but still the respondent institute is affiliated to the University. The respondents are bound to maintain standards of education as per the rules of affiliation framed by the University. Since the respondent institute is to maintain minimum standard of education in terms of Affiliation Rules framed by the University, therefore, the action of the Institute in the matter of appointment of teaching faculty cannot be said to be beyond the jurisdiction of this Court.

(11) In **Zee Telefilms Limited versus Union of India, (2)** Hon'ble Supreme Court has held that when a private body exercises its public functions even if it is not a State, the aggrieved person has a remedy not only under the ordinary law but also under the Constitution by way of a writ petition under Article 226. Relying upon **Andi Mukta Sadguru Shree Muktajee Vandas Swami Suvarna Jayanti Mahotsav Smarak Trust versus V. R. Rudani, (3)** the Court held that the words 'any person or authority' used in Article 226 are, therefore, not to be confined only to statutory authorities and instrumentalities of the State. They may cover any other person or body performing public duty. The form of the body concerned is not very much relevant. What is relevant is the nature of the duty imposed on the body. The duty must be judged in the light of positive obligation owed by the person or authority to the affected party, no matter by what means the duty is imposed. Similar is the view of Five Judges Bench in **Miss Ravneet Kaur versus The Christian Medical College, Ludhiana (4)**. Therefore, we are of the opinion that the argument raised by learned counsel for respondents No. 3 and 4 that the writ petition is not maintainable against the unsanctioned, unaided post in the said Institute is not tenable.

(12) The argument that the petitioner has alternative remedy of filing appeal before the District Judge is again not tenable. Hon'ble

(1) (2002) 8 SCC 481

(2) (2005) 4 SCC 670

(3) (1999) 2 SCC 691

(4) 1997 (4) SLR 221

Supreme Court in **TMA PAI's case** (*supra*) provided for setting up of Educational Tribunal in the States to decide the disputes between the employees and the Management of educational Institutes speedily. The said direction of setting up of Educational Tribunal is in the context of initiation of disciplinary proceedings and necessity of the Institutes to maintain discipline and when allegation of misconduct are made against the members of the teaching faculty. (Refer Para 64 of the judgement). In pursuance of such directions, this Court has authorised District and Session Judges to hear the appeals of the employees of aided/unaided technical institutions. But such appeals are arising out of the disciplinary action which might have been taken by the educational Institutes. The said Tribunal in terms of the directions of **TMA PAI's case** (*supra*) has not been constituted for deciding the cases pertaining to appointment.

(13) Even otherwise, the jurisdiction of this Court, in the face of alternative remedy available, is rule of discretion. It is expedient that if alternative remedy is available, the same should be availed of by the aggrieved person. The jurisdiction of this Court to entertain the writ petition against wrongful action is not barred.

(14) This Court had earlier ordered the Director General of Higher Education to give a report. The facts on record are not disputed. Though the petitioner is NET qualified and available, still the Selection Committee has reported that none of NET qualified person was available. The said recommendation of the Selection Committee is patently contrary to the record. Thus, we are unable to hold the action of respondents No. 3 and 4 in recommending respondent No. 5 to the post of Lecturer in Business Administration for BBA Course as fair or reasonable. The same is patently arbitrary and does not reflect the correct factual position as well. Still further, the record of Selection Committee does not show as to the manner of adjudging the suitability of candidates by grading them in any pre determined criteria.

(15) Consequently, present writ petition is allowed and the said recommendation of the Selection Committee is set aside. Respondents No. 3 and 4 are directed to re-constitute the Selection Committee and proceed to decide the selection of the candidate in accordance with law.

R.N.R.